

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

Petition of the SBC Companies for)
Forbearance from Regulation as a Dominant Carrier) CC Dkt 98-227
for High Capacity Dedicated Transport)
Services in Specified MSAs)

REPLY COMMENTS OF
LOGIX COMMUNICATIONS CORPORATION

Logix Communications Corporation ("Logix") respectfully submits the following reply comments concerning the above-captioned petition filed by the SBC Companies ("SBC") requesting forbearance from regulation as dominant carriers in their provision of high capacity transport services in 14 Metropolitan Statistical Areas ("MSAs") in their service areas.¹ Logix filed initial comments on January 21, 1999.

I. SBC's MARKET POWER ANALYSIS IS DEFICIENT

In its initial comments, Logix pointed out that SBC had failed to provide probative information concerning market share of high capacity services in the 14 MSAs in question

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¹ *Public Notice*, Petition of SBC Communications, Inc. for Forbearance from Regulation as a Dominant Carrier for High Capacity Dedicated Transport Services in Fourteen Metropolitan Service Areas, CC Docket No. 98-227 (December 8, 1998).

because the Quality Strategies study² on which it relied used DS-1 equivalents as the basis for assessing market share without consideration of other factors such as revenues or location of facilities. While several comments supported this view,³ only US West attempted to provide any support for use of DS-1 equivalents as a reasonable basis for assessing market share. In support of use of DS-1 equivalents to measure market share, US West quotes its economic consultants to the effect that "modern telecommunication networks are distinguished most fundamentally by their physical ability to transmit information."⁴ US West does not explain how this statement bears any connection to the issue of the use of DS-1 equivalents to measure market share. To the extent it is intended to mean that the only way to measure market share is by a comparison of the capacity of services provided by SBC and competitors it amounts to no more than a reiteration of its view that DS-1 equivalents should be used without providing any additional justification. Further, US West does not explain why use of DS-1 equivalents does not present a misleading picture of the actual state of competition and why other factors such as revenues or location of facilities should not also be considered. US West ignores the fact that the Commission has previously looked at revenues in assessing market share.⁵ Accordingly, the Commission should reject SBC's assessment of market share based exclusively on DS-1 equivalents.

² SBC High Capacity Market Study, November 25, 1998, Quality Strategies, Washington, DC, at 44, ("Quality Strategies Study").

³ AT&T at 5; Sprint at 9.

⁴ US West at 3.

⁵ *Motion of AT&T Corp. to be Classified as a Non-Dominant Carrier*, 11 FCC Rcd 3271 (1995).

Logix fully supports commenters that point out other serious deficiencies in the Quality Strategies study.⁶ Thus, the study does not provide the underlying data on which it is based, some of which is apparently confidential SBC data, and does not adequately explain the methodology of the study. Therefore, it is impossible for the Commission or interested parties to assess whether its conclusions are reasonable, even assuming DS-1 equivalents were an acceptable measure of market share.

Logix also agrees with those commenters who point out that SBC's long term agreements with customers coupled with high termination charges make it unlikely that customers can turn to SBC's competitors for high capacity services.⁷ Thus, even if competitors had the facilities available throughout the MSAs in question to serve SBC customers, the Commission could not assume that there are sufficient elasticities of supply operating in the market that would enable SBC customers to transfer to other customers.

For these reasons, the Commission should conclude that SBC has not shown that it lacks market power in provision of high capacity services and should deny its petition.

II. FORBEARANCE WOULD BE CONTRARY TO THE PUBLIC INTEREST

In order to grant the SBC petition, the Commission must find, *inter alia*, under Section 10 of the Act⁸ that deregulation of SBC's provision of high capacity service would serve the

⁶ KMC at 2; Time Warner 13; AT&T at 5.

⁷ MCI WorldCom at 17; ALTS at 7; Sprint at 5; AT&T at 15-17.

⁸ 47 U.S.C. Sec. 160(a).

public interest. Logix submits that the Commission could not make that finding for several reasons.

First, the sweeping forbearance from price regulation that SBC seeks would enable it to thwart competition in provision of high capacity services. Within MSAs SBC could reduce prices to deter competition, but raise them in other portions of the MSA where competitors are not able to provide service. Absent any explanation from SBC as to the impact of the requested relief on price caps, Logix is also concerned that SBC could raise high capacity rates outside the MSA to make up for reductions within the MSA. Price deregulation could also enable SBC to engage in extremely aggressive pricing strategies that could constitute signalling and reputational predation that other commenters have discussed.⁹ Such predation could effectively thwart competition and prevent achievement of the pro-competitive goals of the Act. SBC also continues to control access to essential network inputs such as UNEs, collocation, and interconnection that competitors must receive in order to provide service. SBC continues to have the ability to discriminate against competitors by, for example, delaying the provision of these inputs or providing reduced quality essential network features to competitors. Price deregulation would increase SBC's incentive to do so.

Further, as Logix and other commenters contended in initial comments it would not be in the public interest to deregulate SBC's provision of advanced services until it has complied with the key marketing opening provisions of the Telecommunications Act of 1996.¹⁰ In the

⁹ Time Warner at 15.

¹⁰ KMC at 6-8; Sprint at 13; AT&T at 16-17; CompTel at 8.

Access Reform Proceeding, the Commission envisioned that pricing flexibility would not be granted until, at a minimum, incumbent LECs had complied with some objective measure of compliance with market opening measures. SBC completely ignores its obligations in this regard under the Act and instead seeks deregulation before it has opened its markets to competition. It is no accident that SBC has ignored this point since it is a long way from complying with an objective measure of opening its markets to competition such as Section 271 of the Act. SBC's petition represents little more than another effort to obtain price deregulation far in advance of the time when it would be appropriate to be granted.

For these reasons, the Commission should conclude that SBC has failed to show that grant of its petition would serve the public interest and, therefore, must be denied under Section 10 of the Act.

III. CONCLUSION

For these reasons, Logix urges the Commission to deny SBC's request for forbearance from dominant carrier regulation for provision of high capacity services.

Respectfully submitted,



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Dated: February 11, 1999

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments was sent by hand delivery or by U.S. first class mail, postage prepaid, on this 11th day of February, 1999 to the attached list of parties.

A handwritten signature in cursive script, reading "Candise M. Pharr", is written above a horizontal line.

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